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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1260

[Doc. No. AMS-LS-11-0086]

Beef Promotion and Research; Amendment to the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule expands the contracting authority of the Beef Promotion and Research Order (Order). The Beef Research and Information Act (Act) requires that the Beef Promotion Operating Committee (BPOC) enter into contracts with established national non-profit industry-governed organizations including the Federation of State Beef Councils to implement programs of promotion, research, consumer information, and industry information. The Act does not define "national non-profit industry governed organization," however, the Order states that these organizations must be governed by a board of directors representing the cattle or beef industry on a national basis and that they were active and ongoing prior to enactment of the Act. This final rule changes the date requirement in the Order so that organizations otherwise qualified could be eligible to contract with the BPOC for the implementation and

conduct of Beef Checkoff programs if they have been active and ongoing for at least two years.

DATES: Effective [Insert date 1 day after date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Craig Shackelford, Agricultural Marketing Specialist, Marketing Programs Division, on 202/720-1115, fax 202/720-1125, or by e-mail at craig.shackelford@ams.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget has waived the review process required by Executive Order 12866 for this action.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have a retroactive effect.

Section 11 of the Act provides that nothing in the Act may be construed to preempt or supersede any other program relating to beef promotion organized and operated under the laws of the United States or any State. There are no administrative proceedings that must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act and Paperwork Reduction Act

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic effect of this action on small entities and has determined that this final rule will not have a significant economic impact on a substantial number of small entities. The purpose of RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly burdened.

In the February 2011 publication of "Farms, Land in Farms, and Livestock Operations," the U.S. Department of Agriculture's (USDA) National Agricultural Statistics Service (NASS) estimates that in 2010 the number of operations in the United States with cattle totaled approximately 935,000. The majority of these operations that are subject to the Order may be classified as small entities.

The final rule imposes no new burden on the industry. It merely expands the contracting authority as established under section 1260.168(b) within the Order to permit a greater number of organizations to perform work on behalf of the BPOC.

Background and Final Action

The Order is authorized by the Act of 1985 [7 U.S.C. 2901-2918]. The Act was passed as part of the 1985 Farm Bill [Pub. L.99-198]. The program became effective on July 18, 1986, when the Order was issued [51 FR 26132]. Assessments began on October 1, 1986.

Section 5(6) of the Act provides that the BPOC, to insure coordination and efficient use of funds, shall enter into contracts or agreements for implementing any activities, which it has approved to be carried out, with established national nonprofit industry-governed organizations including the Federation of State Beef Councils. This language has the effect of requiring the BPOC to contract with organizations, which qualify as established national non-profit industry-governed organizations. The Act does not define "national non-profit industry governed organization."

Previously, section 1260.113 of the Order defined "established national non-profit industry-governed organizations" as organizations which: (a) are non-profit organizations pursuant to sections 501(c)(3), (5) or (6) of the Internal Revenue Code (26 U.S.C. 501(c)(3), (5), and (6)); (b) are governed by a board of directors representing the cattle or beef industry on a national basis; and (c) were active and

ongoing before enactment of the Act. This final rule amends section 1260.113 of the Order by replacing the existing language under paragraph (c), "were active and ongoing before the enactment of the Act" with "have been active and ongoing for at least two years."

In 2006, the National Cattlemen's Beef Association (NCBA) and the American Farm Bureau Federation (AFBF) initiated the Industry-Wide Beef Checkoff Taskforce (Taskforce) to review, study, and recommend enhancements to the Beef Checkoff program for the purpose of strengthening the Beef Checkoff Program for the common good of the beef industry. The Taskforce included producer and industry representatives and representatives from national organizations, while USDA took on an advisory role during meetings. The Taskforce issued a report in September 2006, which included a recommendation to eliminate section 1260.113(c) in order to make the Beef Checkoff more inclusive. USDA believes that permitting a greater number of organizations to contract with the BPOC could bring new perspectives to the contracting process.

In February 2008 at the Cattle Industry Annual Convention, leaders of the Cattlemen's Beef Board (Board) asked AMS officials if the Board could conduct a program review. The industry officials believed that it would be in the best

interest of the Beef Checkoff Program to conduct a review of the operations to determine if there are any changes that need to or could be made in program operations, the Act, or Order that would facilitate a more effective Beef Checkoff Program.

Included in the Board's subsequent January 2009 recommendations to AMS was a recommendation for a statutory amendment intended to result in an expansion of the contracting authority to organizations created after the 1986 enactment of the Act.

Finally, a meeting was held in Minneapolis, Minnesota on September 27, 2011, attended by many industry stakeholders and co-hosted by the U.S. Cattlemen's Association and the National Farmers Union as requested by the Secretary. The goal of the meeting was to bring more broad-based producer support to the Beef Checkoff program through a discussion of issues regarding Beef Checkoff administration and to provide the Secretary with recommendations that would enhance support for the Beef Checkoff. Many major Beef Checkoff industry stakeholders attended, including the American National Cattlemen, American Veal Association, Livestock Marketing Association, NCBA, National Livestock Producers Association, and Ranchers-Cattlemen Action Legal Fund, United Stockgrowers of America (R-CALF). Representatives from the AMS also attended the meeting, as did the Chief Executive Officer and Producer Chairman of the Board.

As a result of that meeting, the Secretary received a joint letter signed by most of the organizations in attendance. The letter requested that USDA amend Beef Checkoff regulations to expand the contracting authority as authorized under the Act and Order by permitting organizations that are active and ongoing for at least two years to contract with the BPOC.

Conclusion

A greater number of beef industry organizations exist now than did at the time the Order was issued. The Beef Checkoff Program could benefit from the perspectives and skills of some of these organizations that are ineligible solely because they were formed after the enactment of the Act. For several years, the beef industry has been recommending expanding the eligibility of organizations to contract with the BPOC in order to enhance the Beef Checkoff Program. Amending the Order will allow the BPOC to contract with organizations possessing the requisite experience, skills and information related to the marketing of beef and beef products, as is intended under the Act.

Comments

On March 2, 2012, USDA published in the Federal Register (77 FR 12752) for public comment a proposed rule providing for the expansion of the contracting authority as authorized under

the Order by permitting organizations that are active and ongoing for at least two years to contract with the BPOC. Comments were due to USDA by May 1, 2012.

USDA received 20 timely comments associated with the proposed rule for expansion of the contracting authority. Ten comments were submitted by individual cattle ranchers or members of the general public. Ten comments were received from cattle industry organizations. No untimely comments were received and no new information was obtained that was not already provided in the timely comments that are considered below.

Twelve commenters directly expressed support of the expansion of the contracting authority and for the provision requiring that otherwise qualified organizations must have been active and ongoing for at least 2 years.

One commenter provided background information on how the Order came to have its current contracting provisions and compared this to the current proposal. This commenter fully supported the expansion of the contracting authority and the requirement that qualifying contracting organizations be active and ongoing for at least 2 years.

Several commenters offered ideas and suggestions that were pertinent to the Program but were outside the scope of this final rule. One commenter suggested that farmers and ranchers

who pay into the Beef Checkoff should be given the opportunity to vote on Beef Checkoff promotion programs every five years. Six commenters suggested that AMS should reinstate the eligibility requirement contained in its proposed rule dated March 14, 1986 (51 FR 8984) that such organizations must be governed by a board of directors composed of a majority of producers. Eight commenters suggested that AMS should add a new provision to the Order that would restrict any contracting organization from receiving more than a specified percentage of the Beef Checkoff annual program funding. Five commenters suggested that the Beef Checkoff should promote U.S. produced beef. One commenter suggested that AMS should reopen the comment period and propose a plan to make improvements to the administration and operation of the Program. These comments were all beyond the scope of this rulemaking and therefore no changes were incorporated into this final rule based on these comments.

One commenter raised a number of points regarding AMS and the beef industry as a whole that are not pertinent to the proposal and therefore are not addressed.

List of Subjects in 7 CFR Part 1260

Administrative practice and procedure, Advertising, Agricultural research, Imports, Marketing agreement, Meat and meat products, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, 7 CFR part 1260 is amended as follows:

PART 1260--BEEF PROMOTION AND RESEARCH

1. The authority citation for 7 CFR part 1260 continues to read as follows:

Authority: 7 U.S.C. 2901-2911 and 7 U.S.C. 7401.

2. In §1260.113, paragraph (c) is revised to read as follows:

§1260.113 Established national non-profit industry-governed organizations.

* * * * *

(c) Have been active and ongoing for at least two years.

Dated: August 22, 2012

David R. Shipman
Administrator
Agricultural Marketing Service

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